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NO. 731

IN THE

Supreme Court of The United States

October Term, A. D., 1967

IN RE: CLAY S. CROUSE, Petitioner

and

JOHN W. GARDNER, Secretary of Health, Education and Welfare, Intervenor
(Hamilton v. Celebrezze, Beckley Civil Action No. 264)
Respondent

PETITIONER'S RESPONSE TO THE BRIEF FOR RESPONDENT IN OPPOSITION

CLAY S. CROUSE,
Petitioner and Member of the Bar of the Supreme Court of the United States
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Charleston, West Virginia

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TO: The Honorable Earl Warren, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Brief for the Respondent filed in opposition to the Petition for a Writ of Certiorari in one instance misstates petitioner's position in some degree.

On page 8 of Respondent's brief it is said that "* * * petitioner concedes (Pet. 13) that he could have filed a motion to reopen the review proceedings for this purpose (see Pet. App. 34)." If any conces-

sion is made by petitioner, it is only in the sense that he might have *filed* such a motion—in the same sense that any person may bring suit against another—whether a cause of action actually exists or whether such a motion would have had a reasonably forseeable chance of success or a greater appeal to logic, to rules of law and procedure than another available remedy are different matters altogether. Petitioner has never and does not now concede that he *should* have filed a motion to reopen the review proceedings before the District Court under the circumstances then existing or that he could have done so successfully. (See Pet. 13, Pet. App. 34 and Pet. App. 37.)

Petitioner submits that all arguments advanced by Respondent's Brief are answered by the points and authorities presented in the Petition for Writ of Certiorari and need no further exposition.

Dated the 1st day of December, 1967.

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